

Remarks

This Amendment is in response to the Office Action dated **February 6, 2009**. In the Office Action, claims 38, 42-43, 45, 58-60 and 65 are rejected under 35 USC 102(e) as being anticipated by Fischell et al (US 6190403). Claims 39 and 63 are rejected under 35 USC 103(a) as being unpatentable over Fischell et al in view of Kanesaka et al (US 5810872). Claim 46 is rejected under 35 USC 103(a) as being unpatentable over Fischell in view of in view of Anderson et al (US 5800526). Claims 57, 61-62 and 64 are rejected under 35 USC 103(a) as being unpatentable over Fischell. Claim 64 is objected to because it is dependent on itself.

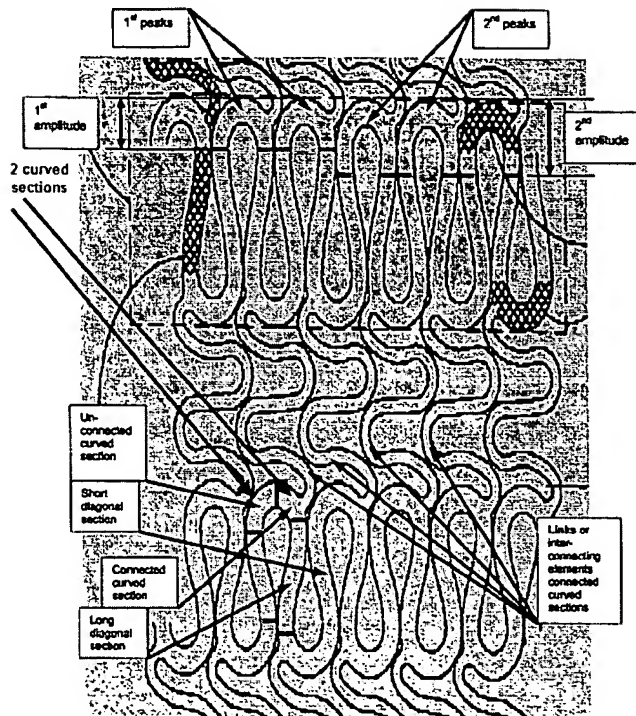
New claims 66-70 have been added. These claims are supported at least by one or more figures in the application. Of these new claims, claims 66-69 read on the previously elected species. Also, claims 47-56 have been canceled without prejudice or disclaimer. We reserve the right to prosecute these claims at a later date.

35 USC 102(e)

Claims 38, 42-43, 45, 58-60 and 65 are rejected under 35 USC 102(e) as being anticipated by Fischell et al (US 6190403).

Claim 38 has been amended to clarify the structure of the circumferential sets of strut members. The amended claim includes the recitation that each two adjacent strut members are connected by a single curved section.

Claim 38 and dependent claims 42-43 and 45 are patentable over Fischell as applied in the Office Action at least because the single curved section recitation is not met. Applicants have reproduced and annotated below the already annotated figure from p. 3 of the Office Action:



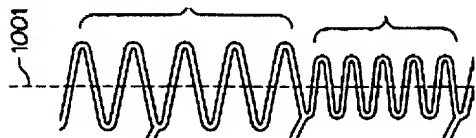
Based on the interpretation of the Office Action, there are two 'curved sections' connecting adjacent struts, the 'connected curved section' and the 'unconnected curved section'. These claims, on the other hand, require that a single curved section connect adjacent strut members.

Claim 58 has also been amended for the sake of clarity only.

The Office Action attempts to deconstruct a band of the Fischell stent in such a way that it can be said to have peaks of different amplitudes. One of ordinary skill in the art, however, would immediately recognize that each band of the Fischell stent consists of peaks of only one amplitude. The Office Action's deconstruction fails in that it implicitly (and inappropriately) applies multiple inconsistent interpretations of the term 'peak'.

Moreover, the interpretation of the Office Action is inconsistent with the specification, contrary to the directions of the USPTO's own MPEP. MPEP 2111 provides that "During patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification'". The specification provides, for example, that "peaks of the same amplitude are grouped together within a band-like element as are troughs of

the same amplitude." The specification was clearly contemplating at least Fig. 11 which, as shown below, includes a grouping of larger amplitude peaks and another grouping of smaller amplitude peaks.



Using the reasoning of the Office Action, the above segment could not be characterized as having peaks of the same amplitude grouped together since the band could be characterized as having an infinite number of peak amplitudes. This is a consequence of simultaneously (and inappropriately) applying multiple (inconsistent) definitions of the term.

It is clear that the specification rules out applying multiple, arbitrary definitions of the peak amplitude.

Moreover, the interpretation of the Office Action is not reasonable.

At least for these reasons, claim 58 and claims 59-60 and 65 are patentable over Fischell.

Applicant notes that new claim 66 is further patentable in that Fischell does not show a band where the peaks of the second amplitude extend further toward the first end of the stent than the peaks of the first amplitude

35 USC 103(a)

Claims 39 and 63 are rejected under 35 USC 103(a) as being unpatentable over Fischell et al in view of Kanesaka et al (US 5810872). The Office Action relies on Kanesaka for substantially straight elements.

Even if, for the sake of argument, the proposed combination were made, it does not remedy the above-discussed deficiency in Fischell concerning the single curved section.

At least for this reasons, claims 39 and 63 are patentable over the proposed combination of Fischell and Kanesaka.

Claim 46 is rejected under 35 USC 103(a) as being unpatentable over Fischell in view of in view of Anderson et al (US 5800526). The Office Action relies on Anderson for tanatalum.

Even if, for the sake of argument, the proposed combination were made, it does not remedy the above-discussed deficiency in Fischell concerning the single curved section.

Claims 57, 61-62 and 64 are rejected under 35 USC 103(a) as being unpatentable over Fischell. The Office Action states:

As to claims 57, 61-62 and 64, Fischell-'403 discloses substantially all limitations of the claimed invention, except for some minor modifications as recited in the claims. There is no evident that these modifications will significantly improve the performance of Fischell-'403. Therefore, the claims are not considered as patentable over Fischell-'403.

The Office Action has not pointed to any other reference that teaches the features of these dependent claims nor has the Office Action provided any motivation for providing such modifications to the Fischell stent. As such, the rejection fails.

The rejection also fails because of the above-discussed deficiencies of Fischell with regard to independent claims 38 and 58, from which the instant claims depend.

Objection

Claim 64 is objected to because it is dependent on itself. Applicant has amended claim 64 to properly depend from claim 58.

Conclusion

Based on at least the above, Applicants respectfully submit that this application is in condition for allowance. Favorable consideration and prompt allowance of the pending claims is requested.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

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